

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

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| HOWARD HOFELICH, |) | Civ. No. 11-00034 DAE-BMK |
| |) | |
| Plaintiff, |) | ORDER SETTING ASIDE ENTRY |
| |) | OF DEFAULT AGAINST |
| vs. |) | DEFENDANTS CARL VICENTI |
| |) | AND OCEAN CONCEPTS SCUBA |
| STATE OF HAWAII, et al., |) | LLC; FINDINGS AND |
| |) | RECOMMENDATION THAT |
| Defendants. |) | PLAINTIFF'S MOTION FOR |
| |) | DEFAULT JUDGMENT AGAINST |
| |) | DEFENDANTS CARL VICENTI |
| |) | AND OCEAN CONCEPTS SCUBA |
| |) | LLC BE DENIED |
| |) | |

ORDER SETTING ASIDE ENTRY OF DEFAULT AGAINST DEFENDANTS
CARL VICENTI AND OCEAN CONCEPTS SCUBA LLC; FINDINGS AND
RECOMMENDATION THAT PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT AGAINST DEFENDANTS CARL VICENTI AND OCEAN
CONCEPTS SCUBA LLC BE DENIED

Before the Court is Plaintiff Howard Hofelich's Motion for Default
Judgment Against Defendants Carl Vicenti and Ocean Concepts Scuba LLC
("Ocean Concepts"). Although the Court previously entered default against
Vicenti and Ocean Concepts, the Court now sets aside that entry of default.
Consequently, the Court finds and recommends that Plaintiff's Motion for Default
Judgment be DENIED.

On May 10, 2011, the Clerk of Court entered default against Vicenti and Ocean Concepts, as requested by Plaintiff. (Doc. 87.) However, on May 25, 2011, District Judge David Alan Ezra entered an Amended Order Dismissing Plaintiff's Complaint Without Leave to Amend. (Doc. 99.) Judge Ezra dismissed Plaintiff's Complaint in its entirety. Specifically, the claims in the Complaint were dismissed on multiple grounds, including failure to state a claim, the Rooker-Feldman doctrine, Eleventh Amendment immunity, sovereign immunity, and judicial immunity. (Id.) Judge Ezra also declined to grant Plaintiff leave to amend his Complaint. (Id.)

In light of Judge Ezra's conclusion that the claims in the Complaint are not viable, the Court finds good cause to set aside the entry of default against Defendants Vicenti and Ocean Concepts. Fed. R. Civ. P. 55 ("The court may set aside an entry of default for good cause."). Further, because the Court sets aside the default entered against those Defendants, it also finds and recommends that Plaintiff's Motion for Default Judgment Against Vicenti and Ocean Concepts be DENIED.

DATED: Honolulu, Hawaii, May 27, 2011.

IT IS SO ORDERED, FOUND AND RECOMMENDED.



/S/ Barry M. Kurren
Barry M. Kurren
United States Magistrate Judge

Hofelich v. State of Hawaii, et al., Civ. No. 11-00034 DAE-BMK; ORDER SETTING ASIDE
ENTRY OF DEFAULT AGAINST DEFENDANTS CARL VICENTI AND OCEAN
CONCEPTS SCUBA LLC; FINDINGS AND RECOMMENDATION THAT PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANTS CARL VICENTI AND
OCEAN CONCEPTS SCUBA LLC BE DENIED.